

Lincoln County, Adjustment of Indebtedness With Flathead County. Lincoln County, Assessment of Property.

Lincoln County, not coming into existence until July 1, that must be the date upon which the indebtedness between it and Flathead County should be adjusted.

It is the duty of the county assessor of Flathead County to make the assessment upon all property which will be in Lincoln county after July first.

Helena, Montana, March 17, 1909.

Hon. J. H. Stevens, County Attorney, Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of the 13th inst., requesting an opinion on the following proposition:

Section 4, of Senate Bill 65, creating Lincoln County, provides that the indebtedness between Flathead and Lincoln Counties shall be apportioned as of January 1, 1909, while Section 16 of said bill provides that the law creating the county shall not take effect until July 1, 1909, thus leaving a period of six months during which Flathead County would have to pay all the

expenses of government without receiving anything from Lincoln County, to reimburse it.

The same question was presented to this office upon the creation of Sanders County, and in an opinion given to Judge Henry C. Smith (Opinions of Attorney General 1905-'06, page 305) it was held that the indebtedness and settlement should be made upon the financial standing of the county at the time the law went into effect, which, in the present case, would be July first. This opinion was based upon the provisions of Section 3, Article XVI., of the state constitution, which provides that upon the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties of which it is formed, and as the county is not really established until July first, that must be the date of determining the ratable proportion of "all then existing liabilities."

You also inquire as to whether the County Assessor should make two assessment rolls, one covering the property in the new county and the other covering the property that will be in Flathead County after division.

The law makes no express provision regarding this matter, but as Section 16 of the Bill was amended so that the county does not come into existence until July first, it necessarily follows that the assessor of Flathead county must proceed to assess all the property found in Flathead County as it exists prior to the time that the Bill creating Lincoln County goes into effect. Section 9 of the law provides for the transcribing of all records of property lying and being within the limits of Lincoln County and all other public records. The assessment rolls are public records of the county and that portion thereof affecting Lincoln County would, of course, have to be turned over to the new county, as the County Commissioners of the new county, under Section 2572 of the Revised Codes, would have to meet as a board of equalization on the third Monday of July to examine and equalize the assessment of the property of Lincoln County. Section 2545, of the Revised Codes, provides that the Assessor must complete his assessment book on or before the second Monday of July and turn it over to the County Clerk. Therefore, if the Assessor of Flathead County made but one assessment book at this time, it would practically be impossible to transcribe that portion of the book relating to the property in Lincoln County in time for the County Commissioners of Lincoln County to take up the equalization of the taxes on the third Monday of July. I would, therefore, suggest that the County Assessor get the commissioners to make an order authorizing him to make up two assessment books, one including the property that will be in Lincoln County and the other in Flathead County, as this will not only expedite the transcribing of the records of Lincoln County but will avoid confusion and materially reduce the size of the assessment book containing the property belonging to Flathead county after the division; then the County Clerk, on the first Monday of July, can certify to the assessment book to be turned over to Lincoln County as a full and correct list of the assessment of property situated in the new county.

Of course, the above procedure relating to the assessment book is not specifically provided for in the above law, but it appears to be the only reasonable method by which the assessment book can be gotten in shape for use by the new county in time to comply with the equalization laws, and it does not entail any extra work upon the present County Assessor for, if he did not make two books, he would have to enter all these assessment lists upon the assessment book of Flathead County.

We know of no legal reason why a separate assessment book of the property in Lincoln County could not be made and certified in the manner stated above.

I herewith enclose you a copy of the printed bill, and have marked with a pencil the portion thereof which was omitted from the enrolled bill in enrollment. However, the questions presented by virtue of this omission will not rise until after the new county actually comes into existence on July first, and will be questions affecting the affairs of the new county and are not, therefore, necessary to be discussed at this time.

Very truly yours,

ALBERT J. GALEN,

Attorney General.